

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF OKLAHOMA

The Honorable Tom R. Cornish

INSTRUCTIONS GOVERNING TRIAL PROCEDURE IN CONTESTED MATTERS

PLEASE READ CAREFULLY

INTRODUCTION:

This instruction sheet is intended to give guidance to counsel involved in a Trial of a "contested matter" pursuant to Rule 9014, Fed. R. Bankr. P. before this Court as to what is expected after the Pre-Trial Hearing and through trial. The rules and instructions contained herein shall bind the parties as if included in the Local Rules of the Court. Neither counsel nor the parties may deviate from the mandatory rules without leave of the Court.

A. Pre-Trial Hearing:

The Pre-Trial Hearing will be utilized to narrow all issues, be they legal or factual, and facilitate the effective organization of the case in anticipation of trial. Counsel who will conduct the trial shall attend the Pre-Trial Hearing. Failure to appear, an unprepared appearance, or a failure to participate in good faith may result in dismissal or sanctions including striking pleadings, default judgments, assessment of expenses, or such other relief the Court may deem appropriate.

Continuances of the Pre-Trial Hearing are rarely granted unless convincing evidence of apocalyptic calamity is presented to the Court.

At the Pre-Trial Hearing, counsel shall be prepared to discuss:

- 1) The elimination of unnecessary claims and defenses;
- 2) The possibility of stipulations and admissions of fact;
- 3) The elimination of unnecessary proof and cumulative evidence;

- 4) Exhibits and witnesses, the necessity for same, the potential for stipulation of admission, stipulation of qualification of experts, the potential for stipulation of content or testimony thus eliminating need for introduction of physical exhibit into evidence or of examining witness at trial;
- 5) Disposition of pending matters, including trailing motions, the necessity and admissibility of deposition testimony at trial;
- 6) Any other appropriate matters in need of resolution in order to effectuate trial;
- 7) Potential trial dates and times and conflicts therewith;
- 8) The necessity for Pre-Trial or Post-Trial briefs on unique, specific legal issues;
- 9) The necessity for the submission of proposed Findings of Fact and Conclusions of Law.

B. Pre-Trial Order, if ordered:

If ordered to be submitted, the Pre-Trial Order will control the course of the trial and may not be amended without the consent of opposing counsel or authorization by the Court. It shall be the responsibility of counsel for the Plaintiff to prepare the Pre-Trial Order with the cooperation and input of defense counsel. Said Pre-Trial Order shall contain the information on and substantially conform to the proposed Pre-Trial Order accompanying this instruction sheet.

C. Pre-Trial Memorandum, if ordered:

If ordered to be submitted, the Pre-Trial Memorandum will be utilized by the Court to ascertain the legal and evidentiary position of the parties to a contested matter. A Pre-Trial Memorandum will be submitted by each party or as otherwise ordered and shall contain:

- 1) A brief introduction of the matter coming on for trial, if known.
- 2) A brief and concise statement of facts and factual issues, setting forth the particular facts that the party intends to prove at trial through the introduction of documentary and/or testimonial evidence.

- 3) A brief and concise statement of legal issues, setting forth legal issues in dispute and party's position with regard to them. The parties may include legal authority as necessary, but such authority is not required at this stage, unless otherwise ordered by the Court.
- 4) Anticipated length of trial.
- 5) Witness list, with a brief narrative of the witness' testimony.
- 6) Exhibit list, with a brief description of each exhibit and the facts that each is intended to prove.

D. Trial:

Trial shall be conducted at the date and time prescribed by the Court at the Pre-Trial Hearing and the Order emanating therefrom. The following instructions shall govern the conduct of the parties at trial:

- 1) On the day of trial and before Court convenes, counsel shall provide an original and one copy (for the use of the Court) of the completed List of Witnesses and List of Exhibits to the Court Recording Deputy, a copy to each opposing counsel and two copies for the Judge.
- 2) On the day of trial and before Court convenes, counsel shall have marked all original exhibits . Plaintiff's exhibits shall be marked numerically; Defendant's exhibits shall be marked alphabetically. Counsel shall provide copies of all exhibits to opposing counsel and two copies of the Judge. The original exhibits shall be accepted by the Court Recording Deputy upon introduction and admission.
- 3) If the parties have stipulated to the admission of exhibits, the parties shall so inform the Court at trial. Such stipulation is encouraged by the Court.
- 4) Counsel shall have prepared the exhibits in sequential order of intended introduction at trial prior to the time scheduled for trial. If delay in trial should occur due to counsel's failure to properly prepare for trial, sanctions against said counsel may result.

E. Record of the Trial:

The official record of the trial is taken by electronic sound (audiotape) recording. Microphones are placed at strategic locations in the Courtroom. Counsel can take a number of steps to facilitate the record taking in the Courtroom:

- 1) Give a business card to the person operating the electronic recording equipment (the Court Recording Deputy);
- 2) When speaking on the record, make certain that you talk directly in front of a microphone;
- 3) At the beginning of the trial, identify yourself at a microphone and spell your name for the record;
- 4) Make certain that all witnesses which counsel calls to testify identify themselves clearly and spell their names;
- 5) Make certain that verbal responses are elicited from witnesses;
- 6) If any witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the Court Recording Deputy.

For the convenience of counsel, a remote readout indicator (index counter) is located on the Bench. Counsel may write down the index numbers as an aid to locating a portion of the record to which you may wish to refer or playback as needed.

Also, the index counter may be used to identify portions of the record which counsel may want duplicated or transcribed for appeal purposes or otherwise.

Copies of the audiotape or of a transcript of the record may be obtained from the Court Recording Deputy by submitting the appropriate order forms. These forms are available from the Court Recording Deputy.

B. JURISDICTIONAL BASIS

(State the legal basis for this Court's jurisdiction, enabling it to make appropriate rulings resulting in a final adjudication of the case on the merits).

C. BRIEF STATEMENT OF STIPULATED FACTS

(Set forth facts not in dispute between the parties and therefore that require no proof at trial. Facts set forth should be, of course, relevant to the proceeding and should be stated with as much specificity as possible).

D. ISSUES OF FACT

(Set forth **with specificity** all factual issues which are in dispute and to which evidence will be directed at trial).

E. EXHIBITS

Plaintiff's and Defendant's lists of exhibits attached.

(List all exhibits to be offered into evidence at trial by each party in the order of intended introduction. This may be done by attaching the completed exhibit list forms which will be utilized at trial to the Pre-Trial Order. Exhibits omitted from the Pre-Trial Order will not be accepted into the record at trial without leave of the Court.

F. WITNESSES

Plaintiff's and Defendant's lists of witnesses attached.

(List all witnesses who will or may be called at trial for testimony. This may be done by attaching the completed witness list forms which will be utilized at trial to the Pre-Trial Order. Witnesses omitted from the Pre-Trial Order will not be allowed to testify at trial without leave of the Court).

G. ISSUES OF LAW

(Set forth **with specificity** all legal issues which are in dispute. These issues should have been addressed in detail in the Pre-Trial Memoranda of Position filed prior to the Pre-Trial Conference).

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

WITNESS & EXHIBIT INSTRUCTIONS FOR ATTORNEYS

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| <p>WITNESS LIST: Use Eastern District Bankruptcy Form provided</p> | <p>(1) Copy to Opposing counsel</p> | <p>Original (Signed) to U.S. Bankruptcy Court</p> | <p>(3) Copies to U.S. Bankruptcy Court</p> |
| <p>EXHIBIT LIST: Use Eastern District Bankruptcy Form provided</p> | <p>(1) Copy to Opposing counsel</p> | <p>Original (Signed) to U.S. Bankruptcy Court</p> | <p>(3) Copies to U.S. Bankruptcy Court</p> |
| <p>EXHIBITS:</p> <p>Exhibits will not be returned.</p> <p>Do not submit Originals to the Court.</p> <p>Plaintiff's Exhibits are marked numerically.</p> <p>Defendant's Exhibits are marked alphabetically.</p> | <p>(1) Marked copy to Opposing counsel</p> | <p>(2) Marked copies to Opposing counsel</p> | <p>(1) Marked copy to Court Recording Deputy upon introduction and admission at the trial or hearing</p> |

